IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7030 OF 2005

Arjun D. Chavale .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.Sudatta Patil for applicant

Mr.K.V.Saste, A.P.P. for respondent

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th November 2005.

P.C.

. Applicant is accused No.3 in C.R.No.11 of 2005 at Kulgaon Police Station registered under section 302 read with 34 I.P.C. He preferred an

application for bail being Criminal Application No.537 of 2005 in the Court of Sessions Judge, Kalyan. It is not disputed that this application was filed after the charge sheet was submitted. Applicant is original accused No.3. Mr.Patil, appearing for applicant contends that the statement of the eye witness which is annexed to the present bail application would show that he has not named accused No.3 as being responsible for inflicting injury by stone on the deceased. He submits that this statement of eye witness as well as other materials were before learned Judge. He submits that even the recovery is of one trouser/ pant with blood stains. Statement of eye witness is recorded after a period of one month and 11 days. He also submits that it is inconceivable that the applicant was wearing the same trouser with blood stains even after 24 hours of the alleged incident. In these circumstances, the applicant is entitled to bail.

2. In my view, by a cryptic order bail application has been rejected without adverting to the materials in support including statement of the eye witness. Instead of this Court considering the pleas, interest of justice would be served if an opportunity is given to applicant to apply to the sessions judge for bail again. The sessions Judge would then pass appropriate orders after hearing the applicant as well as the prosecution. This course is not seriously opposed.

3. In the light of the above, the order passed by the sessions judge dated 15th October 2005 is set aside. Bail application No.537 of 2005 is restored to the file of Sessions Judge, Kalyan for disposal on merits and in accordance with law. The sessions judge shall endeavour to dispose of the same within a period of two weeks from the date of receipt of writ of this order.

(S.C.DHARMADHIKARI, J)